

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

v. :

ROBERT LUSTYIK, :

Defendant. :

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USDS SDNY

DOCUMENT

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ORDER

FILED: 11-6-17

13 CR 616-01 (VB)

By letter dated August 6, 2017 (Doc. #210), defendant Robert Lustyik requests that the Court direct the United States Bureau of Prisons (“BOP”) to adjust his “Public Safety Factor” on the ground that he had nothing to do with any scheme to kidnap or physically harm a person referred to as “Individual 1” in the indictment and the presentence report (“PSR”). At the Court’s direction, the government responded to Mr. Lustyik’s letter by letter dated October 20, 2017. (Doc. #212). In its letter, the government states “there is no evidence that Lustyik was aware that [Lustyik’s co-defendant Rizve] Ahmed contemplated physically harming [Individual 1], and sees no purpose in maintaining that information in Lustyik’s PSR.” (Doc. #212). Accordingly, the government does not object to the deletion of the following sentence in paragraph 23 of Mr. Lustyik’s PSR: “Ahmed’s goal in obtaining the confidential information was to kidnap and physically harm Individual 1, who was living in the United States.”

The Court notes that at Ahmed’s sentencing, the Court specifically declined to find that Ahmed sought to kidnap and physically harm Individual 1. In light of that finding as well as the above-referenced statement in the government’s October 20, 2017, letter that there is no evidence Mr. Lustyik was aware that Ahmed contemplated physically harming Individual 1, the Court now specifically finds that Mr. Lustyik was not involved in any scheme to kidnap or physically harm Individual 1.

The government’s suggestion that the sentence in paragraph 23 of Lustyik’s PSR regarding Individual 1 be deleted is reasonable. However, it is not clear that the Court has the authority to

revise the PSR at this time, especially since this particular statement in the PSR was not contested at Lustyik's sentencing. (See Guide to Judiciary Policy of the Administrative Office of the United States Courts, Vol. 8, Part D, § 610.) Thus, the Court will not order that Lustyik's PSR be revised.

Nevertheless, as a matter of fairness to Mr. Lustyik, it is important that the BOP be made aware of the Court's finding that Lustyik was not in fact involved in any scheme to kidnap or physically harm Individual 1.

Therefore, the Probation Office of this District is directed to promptly provide a copy of this Order to the appropriate person, department, or facility within the BOP having jurisdiction over Lustyik, and to advise the Court when that has been accomplished.

To the extent Mr. Lustyik is asking the Court to order the BOP to change Mr. Lustyik's "Public Safety Factor," that request is denied. That determination and any further determination of Mr. Lustyik's placement is left to the sound discretion of the BOP. However, the Court expects the BOP to take into consideration the findings made in this Order in making any further determination regarding Mr. Lustyik's "Public Safety Factor" or placement.

The Clerk is instructed to mail a copy of this Order to Mr. Lustyik at the following address:

Robert G. Lustyik, Jr.
Reg. No. 91912-054
FCI Danbury
33½ Pembroke Road
Danbury, CT 06811

Dated: November 6, 2017
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge